



Development of Amendments to Rules and a New Rule Concerning the Establishment of a CSO Wet Weather Limited Use Subcategory and the Use of Permit Compliance Schedules for Combined Sewer Overflow Communities

LSA Document #05-218

Overview

The Indiana Department of Environmental Management (IDEM) has developed proposed rule language based on Senate Enrolled Act 620, passed in the 2005 legislative session, for amendments to rules in Title 327 concerning combined sewer overflows and water quality designated uses. This proposed rule is to be presented to the Water Pollution Control Board (board) on June 13, 2007, for consideration of final adoption.

Citations Affected

This rulemaking amends 327 IAC 2-1-3, 327 IAC 2-1-10, 327 IAC 2-1.5-5, 327 IAC 2-1.5-18, and 327 IAC 5-2-10 and adds 327 IAC 2-1-3.1.

Affected Persons

This rulemaking affects permitted dischargers under the National Pollutant Discharge Elimination System (NPDES) whose discharges of wastewater must comply with water quality standards and permit requirements for combined sewer overflows established for waters of the state.

Reason(s) for the Rule

Senate Enrolled Act (SEA) 620, passed in the 2005 legislative session, established the CSO wet weather limited use subcategory of the recreational use designation for waters receiving combined sewer overflows. SEA 620 requires the Water Pollution Control Board to adopt rules to implement the establishment of the subcategory. The subcategory is available to CSO communities that perform a use attainability analysis to change the designated use of waters receiving CSOs and have implemented an approved long term control plan. The long term control plan must be approved by IDEM and be incorporated into the NPDES permit or an order of the commissioner under IC 13-14-2-6. The long term control plan must also specify the water quality-

based requirements that apply to combined sewer overflows during and immediately following wet weather events. SEA 620 also provides authority to include compliance schedules within NPDES permits, where appropriate. The compliance schedule will require the permittee to take specific steps and meet specific milestones to achieve compliance with all applicable standards. A compliance schedule may be included in the NPDES permit for a CSO community during the period of development, approval, and implementation of the long term control plan. The compliance schedule may not exceed the length of time required to implement an approved long term control plan. This rulemaking primarily affects CSO communities within the state. However, the overall effect will be to allow these communities to make progress in reducing and eliminating CSOs, which will positively affect all waters of the state.

Economic Impact of the Rule

A CSO community affected by this rulemaking will not incur any additional fiscal impact that it is not already subject to under state statute IC 13-18-3-2.5(a), SECTION 4, of SEA 620 created by the 2005 state legislature to impose both the wet weather limited use subcategory designation and the compliance schedule requirements. CSO communities will benefit under this rulemaking due to the establishment of a subcategory of the recreational use designation that lessens restrictions during and for a time period following CSO discharge events as long as the affected community is complying with the requirements of these amendments and new rule.

Benefits of the Rule

CSO communities have largely been consistently in violation of NPDES permit limits during and for some time following a CSO discharge event. The

wet weather limited use subcategory established through this rulemaking will alleviate compliance issues for CSO communities that comply with the requirements of this rule and will allow time to achieve the NPDES permit limits through a compliance schedule included in the CSO community's NPDES permit.

Description of the Rulemaking Project

This rulemaking implements IC 13-18-3-2.5(a) SECTION 4, of Senate Enrolled Act 620, the statute written into law in the 2005 legislative session regarding the establishment of a CSO wet weather limited use subcategory of the recreational use designation for waters receiving CSOs. No workgroup was formed to develop this rule language because the legislative directive is absolute.

Scheduled Hearings

First Public Hearing: August 9, 2006, at the WPCB meeting held at the Northwestern Indiana Regional Planning Commission's office, 6100 Southport Road, Portage, Indiana.

Second Public Hearing: June 13, 2007, at the City of Fort Wayne City-County Building, Omni Room, One East Main Street, Fort Wayne, Indiana.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.

6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

- (A) human, plant, animal, or aquatic life; or
- (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The amended rules and new rule are consistent with federal rules.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the Indiana Register. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the department's responses to comments from the first comment period and the draft rule. Notice of the first hearing on the rule is also published in the Indiana Register. The Water Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule, also known as the draft rule as preliminarily adopted, is published in the Indiana Register after preliminary adoption. If the proposed rule is substantively different from the draft rule, a third written comment period is required. After notice in the Indiana Register, the second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule becomes effective 30 days after filing with the Legislative Services Agency.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635 or technical information about combined sewer overflows and wet weather issues from Cyndi Wagner, Wet Weather Section, Office of Water Quality, (317) 233-0473, or (800) 451-6027 (in Indiana).